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Report of the United Nations Commission on International Trade Law on the work of its forty-fourth session

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Report of the United Nations Commission on International Trade Law on the work of its forty-fourth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

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Having considered the report of the Commission on the work of its forty-fourth session,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its forty-fourth session;[1]

2. *Commends* the Commission for the finalization and adoption of the UNCITRAL Model Law on Public Procurement[2] and the UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective;[3]

3. *Takes note with interest* of the progress made by the Commission in its work on the preparation of legal standards on transparency in treaty-based investor-State arbitration, online dispute resolution for cross-border electronic transactions and electronic commerce, in particular at the colloquium held in February 2011, the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests, and a draft text on the registration of security rights in movable assets;[4]

4. *Welcomes* the decisions of the Commission to prepare a guide to enactment of the UNCITRAL Model Law on Public Procurement, in as efficient and practical a manner as possible, and a study on possible future work of the Commission in the area of public-private partnerships and privately financed infrastructure projects, to undertake work in the field of electronic transferable records, to prepare, in cooperation with the World Bank, draft principles on effective secured transactions regimes, within existing resources and without utilizing Working Group resources, and to include microfinance as an item for the future work of the Commission and to further consider that matter at its next session, in 2012;[5]

5. *Notes with appreciation* the decision of the Commission to commend the use of the 2010 revision of the Uniform Rules for Demand Guarantees, published by

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17).

[2] Ibid., chap. III and annex I.

[3] Ibid., chap. IV.

[4] Ibid., chaps. V-IX.

[5] Ibid., chap. III, paras. 181-187 and 190-191; chap. VIII, para. 228; and chaps. IX and X.

the International Chamber of Commerce, as appropriate, in transactions involving demand guarantees;[6]

6. *Also notes with appreciation* the progress made in the ongoing project of the Commission on monitoring the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958,[7] and the decision of the Commission to request the Secretariat to pursue its efforts towards the preparation of the guide on the Convention;[8]

7. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

8. *Notes with appreciation* the significant progress in the Commission's coordination and cooperation activities in the field of security interests and in particular the approval by the Commission of a paper prepared jointly by the Permanent Bureau of the Hague Conference on Private International Law and the secretariats of the Commission and the International Institute for the Unification of Private Law, with the assistance of outside experts, entitled "Comparison and analysis of major features of international instruments relating to secured transactions", as well as the request that it be given the widest possible dissemination, including by way of a United Nations sales publication with proper recognition of the contribution of the Permanent Bureau of the Hague Conference on Private International Law and the secretariat of the International Institute for the Unification of Private Law;[9]

9. *Notes* the Commission's agreement that a coordinated approach to the matter of the law applicable to the proprietary effects of assignments of receivables is in the interest of all States and its request to the Secretariat to cooperate closely with the European Commission with a view to ensuring a coordinated approach to the matter, taking into account the approach followed in the United Nations Convention on the Assignment of Receivables in International Trade[10] and the UNCITRAL Legislative Guide on Secured Transactions;[11]

10. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, and in that

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[6] Ibid., chap. XI.

[7] United Nations, *Treaty Series*, vol. 330, No. 4739.

[8] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), chap. XII.

[9] Ibid., paras. 278-283.

[10] See resolution 56/81, annex.

[11] United Nations publication, Sales No. E.09.V.12.

respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work;

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Takes note with interest of the comprehensive approach to technical cooperation and assistance based on the strategic framework for technical assistance suggested by the Secretariat to promote the universal adoption of the Commission's texts and to disseminate information on recently adopted texts;[12]

(d) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, for the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(e) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission, in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the United Nations development agenda, including the achievement of the Millennium Development Goals;

11. *Calls upon* Member States, non-member States, observer organizations and the Secretariat to apply the Commission's rules of procedure and methods of work, taking into account the summary of conclusions as reproduced in annex III to the report on the work of its forty-third session,[13] with a view to ensuring the high quality of the work of the Commission and international acceptability of its instruments, and in this regard recalls its previous resolutions related to this matter;

12. *Welcomes* the decision by the Commission to establish, subject to the relevant rules and regulations of the United Nations and the internal approval process in the Office of Legal Affairs of the Secretariat, a Regional Centre for Asia and the Pacific, in the Republic of Korea, as a novel yet important first step for the Commission in reaching out and providing technical assistance to developing countries in the region, it being understood that the establishment of a regional presence would have to rely entirely on extrabudgetary resources, including but not limited to voluntary contributions from States, expresses its appreciation to the

[12] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), chap. XIII.

[13] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex III.

Government of the Republic of Korea for its generous contribution to the pilot project, and requests the Secretary-General to keep the General Assembly informed of developments regarding the establishment of such regional centres, including the Regional Centre for Asia and the Pacific in the Republic of Korea and, in particular, their funding and budgetary situation;[14]

13. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in the field of international trade law in those countries to facilitate the development of international trade and the promotion of foreign investment;

14. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixty-sixth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

15. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards on international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

16. *Welcomes in this regard* the panel discussion on the role of the Commission in the promotion of the rule of law in conflict and post-conflict societies, held during the forty-fourth session of the Commission, and takes note of the particular relevance of the Commission's instruments and resources for creating an environment of sustainable economic activity conducive to post-conflict reconstruction and preventing societies from sliding back into conflict;

17. *Takes note* of the views expressed by the Commission at the end of the panel discussion that, owing to a lack of sufficient resources, innovative ways need to be found for the early engagement of the Commission's instruments and resources in post-conflict recovery operations by the United Nations and other donors, and that awareness needs to be increased that the Commission deals also with the basic building blocks for commercial activity and thus makes a real and immediate contribution in societies emerging from conflict;[15]

18. *Reiterates its request* to the Secretary-General, in conformity with General Assembly resolutions on documentation-related matters,[16] which, in

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[14] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 262-270.

[15] Ibid., paras. 318-319.

[16] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

particular, emphasize that any invitation to limit, where appropriate, the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and functions of the Commission in the progressive development and codification of international trade law in implementing page limits with respect to the documentation of the Commission;[17]

19. *Requests* the Secretary-General to continue providing summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts, and encourages the Commission to discuss the matter at its next session, on the basis of a report to be prepared by the Secretariat;[18]

20. *Reaffirms* the need to ensure the broadest possible participation in meetings of the Commission, and in this connection notes the existing rationale for the historical alternating pattern of sites for meetings of the Commission, that is, the proportionate distribution of travel costs among delegations, the global influence and presence of the Commission and the needs of developing countries, many of which do not have a representation in Vienna, also notes the Commission's agreement that every effort should be made to identify alternatives to abolishing the alternating pattern of meetings that would achieve a similar result and, in this respect, endorses the Commission's agreement to achieve that result by reducing its allocation for conference services, and encourages Member States, jointly with the Secretariat, to continue to review current working practices to achieve increased efficiency, and with a view to identifying budgetary savings;[19]

21. *Stresses* the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to conventions, enacting model laws and encouraging the use of other relevant texts;

22. *Welcomes* the preparation of digests of case law relating to the texts of the Commission, such as a digest of case law relating to the United Nations Convention on Contracts for the International Sale of Goods,[20] a digest of case law relating to the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law,[21] and a digest of case law relating to the UNCITRAL Model Law on Cross-Border Insolvency,[3] with the aim of assisting in the dissemination of information on those texts and promoting their use, enactment and uniform interpretation.

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[17] Resolution 59/39, para. 9 and 65/21, para. 18; *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 124-128.

[18] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 333.

[19] Ibid., chap. XXI.

[20] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[21] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.